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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/923,181	08/06/2001	Eric Teller	1148/039	1717

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METZ LEWIS, LLC  
11 STANWIX STREET  
18TH FLOOR  
PITTSBURGH, PA 15222

EXAMINER
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MCCROSKY, DAVID J

ART UNIT	PAPER NUMBER
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3736

DATE MAILED: 04/23/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/923,181

Applicant(s)

TELLER ET AL.

Examiner

David J. McCrosky

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8, 15-17, 32-44, 64-76, 96-108, 128 and 137-140 is/are pending in the application.

4a) Of the above claim(s) 9-14, 18-31, 45-63, 77-95, 109-127, 129-136 and 141-151 is/are withdrawn from consideration.

- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8, 15-17, 32-44, 64-76, 96-108, 128 and 137-140 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## **DETAILED ACTION**

### ***Election/Restrictions***

During a telephone conversation with Philip Levy on November 1, 2002 a provisional election was made with traverse to prosecute the invention of Group I, claims 2-8, 34-37, 44, 66-69, 76, 98-101, 108 and 137-140. Affirmation of this election must be made by applicant in replying to this Office action. Claims 9-14, 18-31, 45-63, 77-95, 109-127, 129-136 and 141-151 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-8, 15-17, 32-44, 64-76, 96-108, 128 and 137-140 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claims 1, 33, 65 and 97, analytical status data is defined in terms of itself.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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Claims 1-8, 15, 16, 32-40, 42-44, 64-72, 74-76, 96-104, 106-108, 128 and 137-140 are rejected under 35 U.S.C. 102(e) as being anticipated by Jacobsen et al (cited by Applicant). The reference discloses a plurality of sensors for sensing global positioning, ECG, blood pressure, breathing rate or oxygen saturation. See col. 6, ll. 21-44. Processors or computing devices (128, 226) are physically coupled to the sensors and process information obtained by the sensors. See col. 8, ll. 56-64 and col. 9, ll. 42-49. Another processor or computing device (310), coupled to the sensors, analyzes the sensor signals such that instructions may be sent to the soldier's display when problem situations arise. See col. 11, ll. 41-50 and Fig. 4A. A memory unit (349) stores up to four hours of medical history. Further processing or computing produces diagnosis, audible alarms or messages. See col. 12, ll. 21-38. Wireless transceivers transmit information from and transmit information to a wireless device worn by an individual. See Figure 7.

Applicant should note that it has been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138 (CCPA 1946).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 17, 41, 73 and 105 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jacobsen et al as applied to claims 1, 33, 38, 65, 70, 97 and 102 above and further in view of Pearlman et al. Jacobsen et al teach the claimed invention but do not teach a tactile output device. Pearlman et al disclose a wrist pager with a tactile alarm for instances where an audible alarm would be dangerous. See col. 1. When an incoming message is received, the device notifies the user by providing a tactile sensation to the wrist. See col. 3. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system of Jacobsen et al with a tactile alarm, as taught by Pearlman et al, for instances where an audible alarm would be dangerous.

### ***Conclusion***


Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. McCrosky whose telephone number is 703-305-1331. The examiner can normally be reached on Mon-Fri 8:30-5:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max F. Hindenburg can be reached on 703-308-3130. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

DJM  
April 21, 2003



ERIC F. WINAKUR  
PRIMARY EXAMINER